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OFFICE OF PETITIONS

In re Application of	:
Roger P. Jackson	:
Application No. 10/649,412	: DECISION ON PETITION
Filing Date: 08/27/2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10,321	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 15, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed Application Data Sheet ("ADS").

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1).

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation,

divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Additionally, the ADS is not acceptable as drafted since copendency does not exist between the above-identified application, and Application No. 09/729,600, for which the benefit is sought. Application No. 09/729,600, filed December 4, 2000, issued as U.S. Patent No. 6,440,170 on August 27, 2002. The above-identified application was filed on August 27, 2003. The statute at 35 U.S.C. § 120 permits a continuing application to claim the benefit of the filing date of a copending, previously filed, parent application provided there is inventorship overlap between the continuing application and the parent application. Here, the application for which the benefit is sought, 09/729,600, issued as a patent one year before the above-identified application was filed. As such, there is no copendency between the applications. Further, because Application No. 09/729,600 was filed subsequent to Application No. 09/644,720, it would be improper for Application No. 09/644,720 to now claim benefit of priority to Application No. 09/729,600.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with 35 U.S.C. § 120; 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed application(s) to this application, are required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Derek Woods at (571) 272-3232.

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